

NASS shall not restrict CCC from using data from other sources.

(e) No delegation herein to a State or county FSA committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county Farm Service Agency committee.

[60 FR 52610, Oct. 10, 1995]

§ 1477.3 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing the reconstitution of farms in part 719 of this title and in the regulations applicable to the production adjustment programs for feed grains, rice, upland and extra long staple cotton, wheat, and related programs set forth in part 1413 of this chapter.

Actual production means the quantity of the crop actually harvested or which could have been harvested as determined by the county or State FSA committee in accordance with instructions issued by the Deputy Administrator. In the case of sugarcane, the quantity of sugar produced from such crop shall exclude acreage harvested for seed. For the crops listed below, an appraisal will be required on any unharvested production. If a producer has any harvested production of the crop, the de minimis yield is not applicable. The appraisal must show that the yield would be equal to or less than the de minimis yield for the de minimis yield provision to apply. If an eligible producer has appraised production equal to or less than the specified quantity for the following commodities, such production shall be considered to be zero:

- (1) Wheat—4 bushels per acre.
- (2) Corn—9 bushels per acre.

(3) Grain Sorghum—6 bushels per acre.

(4) Barley—5 bushels per acre.

(5) Oats—7 bushels per acre.

(6) Upland cotton—66 pounds per acre.

(7) ELS cotton—33 pounds per acre.

(8) Rice—628 pounds per acre.

(9) Soybeans—2 bushels per acre.

(10) Sunflower, Oil—100 pounds per acre.

(11) Sunflower, Confectionery—100 pounds per acre.

(12) Safflower—50 pounds per acre.

(13) Flax—1 bushel per acre.

(14) Canola—50 pounds per acre.

(15) Rapeseed—50 pounds per acre.

(16) Mustard seed—50 pounds per acre.

Aquaculture means the propagation and rearing of aquatic species from a commercial operation conducted on private land or in private waters and in 1994 excludes ornamental fish.

Aquaculture facility for 1994 means a commercial operation conducted on private land or in private waters.

Aquatic species means any finfish, mollusk, crustaceans, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

CCC means the Commodity Credit Corporation.

Contract payments means a guaranteed payment for production, as opposed to delivery of a crop pursuant to a contract.

Crop signup period (1994) means the signup period ending March 31, 1995 (or other such date established by CCC), for assistance for eligible producers who have incurred 1994 crop losses.

Crop year means the year harvest begins for the crop. However, for valencia oranges harvested in 1991, 1992, 1993, and 1994, the crop shall be considered to be a 1990, 1991, and 1993 crop respectively.

Deputy Administrator means the FSA Deputy Administrator for Farm Programs (Previously the Deputy Administrator, State and County Operations (DASCO)).

Disaster payment yield means:

- (1) For target price commodities with respect to farms enrolled and not enrolled in the applicable year's acreage reduction program, the farm program payment yield for the applicable year

determined in accordance with part 1413 of this chapter;

(2) For peanuts, the applicable year's farm yield determined in accordance with part 729 of this title;

(3) For all kinds of tobacco, the county average yield of the 5 years prior to the applicable disaster year, as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest;

(4) For soybeans, sugarcane, sugar beets, and sunflowers, the average of the county average yield for the 5 years prior to the applicable disaster year as determined by NASS, adjusted for adverse weather conditions, in accordance with instructions issued by the Deputy Administrator; such county average yield for sugarcane shall exclude normal seed cane production;

(5) For nonprogram crops (including honey per hive), the average of the actual yields for the 3 years prior to the applicable disaster year, in accordance with instructions issued by the FSA, if eligible producers are able to provide production evidence of actual crop yields for any of the applicable years. If a producer is not able to provide adequate production evidence for the 3 previous years, the county committee shall use a yield that is equivalent to 65 percent of the average county yield for the years without adequate records. The county average yield shall be the average of the county average yields for the 5 years prior to the applicable disaster year, as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest. Crop yields for the 1994 Disaster Assistance Program may be the same yield that was established for the crop for 1993 unless the State committee finds a better source to establish yields. In establishing county average yields for nonprogram crops, the State committee shall use the best available information concerning yields. Such information may include: NASS data, extension service

records, credible nongovernment studies, and yields for the crop in similar counties. In the case of sod, sprigging turf, and trees and shrubs, the crop must be dead to be eligible for a disaster payment. For all nonprogram crops, the county committee may reduce the yields set by the State committee for the county or an area of the county, to what the county committee considers a normal yield if:

(i) Cultural practices, including the age of the planting or plantings, are determined to be different from those that were used to establish the yield; or

(ii) The yield was established on a State or area level and it is determined that it was too high for the county or an area of the county.

Doublecropping means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

Eligible crop for crop production losses means any of the 1990 through 1994 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, peanuts, oilseeds, sugarcane, sugar beets, tobacco, or nonprogram crops including ornamental crops, nursery crops, and for 1990 through 1992, and for 1994, aquaculture production, excluding ornamental fish for 1994.

Eligible disaster means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, earthquake, or excessive wind, or any combination thereof; or related condition, including but not limited to heat, insect infestation, plant disease, or other deterioration of a crop of a commodity, including aflatoxin, that is accelerated or exacerbated naturally as a result of damaging weather occurring prior to or during harvest as determined by CCC. Curly top virus condition is an eligible disaster condition for losses of 1990 through 1992 crops of sugar beets.

Expected production means:

(1) For target price commodities on farms enrolled in the applicable year's acreage reduction program, the disaster payment yield times the sum of the applicable year's actual planted acreage and the applicable crop year's prevented planted acreage of the crop as approved by the county committee, not to exceed the permitted acreage of the crop.

(2) For target price commodities on farms not enrolled in the applicable year's acreage reduction program and for acreage of program crops planted on farms enrolled in such programs which is in excess of the permitted acreage established for the crop in accordance with 7 CFR 1413.11; peanuts; sugarcane excluding seed cane acreage; sugar beets; soybeans; sunflowers; tobacco other than burley tobacco; and nonprogram crops, except as provided in paragraphs (3) through (5) of this definition, the disaster payment yield times the sum of:

(i) The applicable year's planted acreage of the crop, and

(ii) The applicable year's prevented planted acreage credited for disaster payment purposes not to exceed the larger of:

(A) The planted and approved prevented planted acreage of the crop in the year immediately proceeding the disaster crop year minus the applicable disaster crop year's planted acreage of the crop, or

(B) A quantity equal to the average of the acreage planted and approved prevented planted of the crop in the three years prior to the disaster crop year minus the applicable disaster year's planted acreage of the crop.

(3) For quota kinds of tobacco other than burley and flue-cured, the expected production as determined according to paragraph (2) of this definition shall not exceed the result of multiplying the applicable year's effective farm acreage allotment times the disaster payment yield.

(4) For burley tobacco, the smaller of:

(i) The applicable year's effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the

natural disaster provisions of part 723 of this title; or

(ii) The disaster payment yield times an acreage determined by dividing the amount in paragraph (4)(i) of this definition by the farm yield established for the farm according to part 723 of this title;

(iii) The disaster payment yield times the sum of the acreage of burley tobacco:

(A) That was planted on the farm in the applicable year, including any approved failed acreage;

(B) For which prevented planted acreage credit is approved by the county committee with respect to the applicable year's crop; and

(C) Determined by dividing the quantity of any unmarketed tobacco on hand from the applicable year's by the disaster payment yield, or

(5) For flue-cured tobacco, the smaller of:

(i) The applicable year's effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the natural disaster provisions of part 723 of this title; or

(ii) The sum of:

(A) The quantity determined under the provisions of paragraph (2) of this definition,

(B) The quantity of any unmarketed tobacco on hand from the previous year's crop, and;

(C) The amount by which the farm's applicable year's basic quota exceeds the previous year's basic quota.

(6) With respect to crops planted in a rotation, the most recent corresponding year(s) in the rotation shall be substituted for the 3 prior year's crop for purposes of determining the prevented planted acreage credit.

FSA means the Farm Service Agency.

Final sign-up period means the sign-up period beginning October 13, 1992, and ending on February 12, 1993, (or other such date as established by CCC) for assistance to eligible producers who have incurred losses in 1990, 1991, or 1992 but shall not be for a year for which disaster payments were earned under the initial sign-up period.

Initial signup period means the signup period ending March 13, 1992 (or other such date as established by CCC), for

assistance for eligible producers who have incurred 1990 or 1991 losses.

Multiple plantings means subsequent plantings in the same crop year of non-program crops and soybeans that are planted or are prevented from being planted on different acreage on a farm and considered different crops for determining disaster benefits in accordance with instructions issued by the Deputy Administrator.

Nonprogram crop means a crop including ornamentals such as flowering shrubs, flowering trees, field or container grown roses, or turf, and sweet potatoes produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income, as determined by the county committee in accordance with the instructions issued by the Agency, which is not a crop of a target price commodity, quota or additional peanuts, sugarcane, sugar beets, tobacco subject to marketing quotas, soybeans, or sunflowers. For 1990 through 1992, and 1994 aquaculture production is considered to be a nonprogram crop.

Operator means the person who is in general control of the farming operations on the farm during the program year.

Orchards means an area of land devoted to the cultivation of fruit trees and nut trees.

Ornamental fish for 1994 disaster purposes means any species of fish not being grown for market as food or bait.

Person shall mean a person as defined in part 1497 of this chapter, and all rules with respect to the determination of a person found in such part shall be applicable to this part. However, the determinations made in accordance with 7 CFR part 1497, subpart B, Person Determinations, shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

Producer means producer as defined in accordance with 7 CFR 1413.3.

Qualifying gross revenues means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income from all sources.

Repeat crops means a second crop of a commodity planted on the same acreage as the first crop of the commodity.

Replacement crops means a crop planted on an acreage after the failure or prevented planting of the first crop on that same acreage, except for repeat crops, double-cropped crops, for which disaster benefits are not applicable.

Subsequent sign-up period means the sign-up period beginning September 8, 1992, and ending on February 12, 1993, (or other such date as established by CCC) for assistance to eligible producers who have incurred losses on program crops planted in 1991 for harvest in 1992.

Target price commodity means a crop of wheat, corn, grain sorghum, barley, oats, upland and extra long staple (ELS) cotton, or rice.

[57 FR 10963, Mar. 31, 1992, as amended at 58 FR 9108, Feb. 19, 1993; 58 FR 51758, Oct. 5, 1993; 60 FR 52611, Oct. 10, 1995]

§ 1477.4 Availability of disaster payments.

(a) A person as defined in § 1477.3 who has qualifying gross revenues in excess of \$2 million for the most recent tax year preceding the crop year for which benefits are requested shall not be eligible to receive disaster benefits under this part.

(b) Eligible producers with 1992 losses of production in excess of 65 percent of expected production must agree to obtain crop insurance, if available, any time during the subsequent or final disaster signup periods, under the Federal Crop Insurance Act for the 1993 crop of the commodity. The requirement is waived if the sales closing date passed for the 1992 crop before October 13, 1992.

(c) Eligible producers with losses of production in excess of 65 percent of expected production must agree to obtain crop insurance, if available, any time during the applicable signup period, under the Federal Crop Insurance Act for the 1994 crop of the commodity for:

(1) Producers requesting 1993 crop loss benefits, and